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IN THE

Supreme Court of the United States

OCTOBER TERM, 1982

SOUTH CAROLINA STATE CONFERENCE OF BRANCHES OF THE NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE, INC., and its PRESIDENT, WILLIAM F. GIBSON, et al.,

Appellants,

—v.—

RICHARD W. RILEY, GOVERNOR OF THE STATE OF SOUTH CAROLINA, et al.,

Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT OF SOUTH CAROLINA, COLUMBIA DIVISION

JURISDICTIONAL STATEMENT

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In the

Supreme Court of the United States

October Term, 1982

No. 82-

South Carolina State Conference of Branches of the National Association for the Advancement of Colored People, Inc., and its President, William F. Gibson, et al.,

Appellants,

—v.—

Richard W. Riley,
Governor of the State of South Carolina, et al.,

Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
OF SOUTH CAROLINA, COLUMBIA DIVISION

JURISDICTIONAL STATEMENT

The appellants, South Carolina State Conference of Branches of the NAACP, Inc. and its President, Wm F. Gibson, et al., appeal from a U.S. District Court for the District of South Carolina, Columbia Division denial of permanent-preliminary injunctive relief, dated June 2, 1982, which held Section 5 preclearance under 42 U.S.C. 1973 (c) non-applicable to a congressional district reapportionment plan adopted by the district court with minor modification after submission by the "covered jurisdiction" in whose legislature the plan had originated through formulation and passage by one legislative chamber.

Opinions Below

The order of the U.S. District Court for the District of South Carolina, Columbia Division, which appears in the appendix hereto, Appendix A, *infra*, is not reported. Related orders by that court, orders of May 7, 1982 and June 2, 1982, also appear in the appendix hereto, Appendix B, and Appendix C, *infra*. Neither is reported.

Jurisdiction

This suit was brought by the South Carolina State Conference of Branches of the NAACP, William F. Gibson, its President, and other named individuals seeking declaratory, injunctive, and other equitable relief pursuant to the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973 *et seq.*, as well as other state and federal statutory and constitutional provisions. The suit challenged Congressional districting in South Carolina.

On March 8-9, 1982, the three-judge court held that, due to demographical changes, the 1970 Congressional districting plan could not stand (See Appendix A, *infra*). The Court also approved a plan authored by the South Carolina House of Representatives and submitted by the leadership of the House of Representatives, one of the defendants. After minor modification as directed by the court, the House plan was approved and ordered into effect in the May 7, 1982 order (See Appendix C, *infra*).

On June 2, 1982, the three-judge court denied an application by appellants to enjoin implementation of the newly approved plan until it had met the preclearance requirement of Section 5 of the Voting Rights Act, 42 U.S.C. 1973 (c) (See Appendix A, *infra*).

On June 8, 1982, this court denied appellants' application for a stay and/or injunction which would have required preclearance prior to the implementation of the new plan (See Appendix D, *infra*).

A notice of appeal to this court was duly filed in the United States District Court for the District of South Carolina, Columbia Division on May 27, 1982 (See Appendix D, *infra*). This appeal is being docketed in this court in a timely fashion. The jurisdiction of this court is invoked under 42 U.S.C. 1973 (c) and 28 U.S.C. 1253.

Question Presented

Whether a congressional reapportionment plan developed, approved and submitted in litigation by only one, of two, legislative chambers of a "covered jurisdiction" *and* later court adopted, with only minor modification, is a legislatively drawn plan, thus subject to preclearance under Section 5 of the Voting Rights Act, or a court plan, thus exempt from Section 5 preclearance?

Statutory and Constitutional Provisions Involved

Section 5 of the Voting Rights Act of 1965, Pub. L. No. 89-110, Title I, §5, 79 Stat. 439, as amended by Pub. L. No. 91-285 §§2, 5 (June 22, 1970) 84 Stat. 314, 315, as amended by Pub. L. No. 94-73, Title II §§204, 206, Title IV §§405 (August 6, 1975) 98 Stat. 402, 405 as amended, by Pub. L. No. 97-2-5 (June 29, 1982), 96 Stat. 131, 135 [codified at 42 U.S.C. §§1973 (c) (1970)]; U.S. CONST. amend. XIV and U.S. CONST. amend XV.

Statement of the Case

Appellants brought suit under the Voting Rights Act of 1965 as amended against the State of South Carolina and its officials for their purposeful failure to devise and implement a congressional reapportionment plan, which failure violates constitutional and statutory requirements for equitable districting and avoidance of disproportionately burdening the ability of blacks to participate on an equal basis in the electoral process. A copy of the Complaint is annexed hereto at Appendix H.

The three-judge District Court invited all parties to submit proposed congressional redistricting plans to the Court. The court heard only oral argument from all counsel in support of their various plans and respective legal positions.

The District Court in its Per Curiam Order filed on March 8, 1982, and entered on March 9, 1982, found an impermissibly high variation in the 1970 Congressional districting plan in light of the 1980 census. While discussing various plans submitted by the parties, the Court stated, in part, "(w)e have considered all of the suggested plans. *We have not attempted to develop one of our own.*" (emphasis added). A copy of the Court's order is annexed hereto at Appendix B.

The Court adopted a congressional plan drawn by the South Carolina House of Representative, but rejected by the South Carolina Senate. The Court expressed dissatisfaction with only one aspect of the plan, namely the precise location of the line dividing Berkeley County. The Court ordered the South Carolina House-drawn plan into effect, subject to the defendants' modification of the line dividing Berkeley County.

Appellants became aware through media reports of respondents' intent to implement the Congressional redistricting plan initially approved by the District Court on March 9, 1982, and finally approved on May 7, 1982.

By letter of April 12, 1982, appellants advised appellees of *McDaniel* v. *Sanchez*, 452 U.S. 130 (1981), and of the requirements of the Voting Rights Act of 1965, as amended, 42 U.S.C. §1973(c) which, appellants stated, require Section 5 preclearance of court-ordered legislatively-drawn plans.

Appellants filed with the District Court an application for Order to Show Cause and Motion for Injunction and entry of an order requiring appellees to show cause why they should not be enjoined from proceeding with implementation of the Congressional redistricting plan as ordered into effect by the Court because of the appellees' refusal or failure to submit the plan to the United States Attorney General for Section 5 preclearance.

The District Court denied Appellants' application on June 2, 1982, stating that the plan is not a legislatively enacted plan and is not subject to preclearance requirements of Section 5.

On June 8, 1982, this Court denied an application by appellants to enjoin implementation of the adopted plan until such time as it was subject to preclearance.

The Question Is Substantial

This jurisdictional statement raises the substantial question of whether the preclearance requirements of Section 5 of the Voting Rights Act, 42 U.S.C. § 1973 (c) applies to a congressional reapportionment plan that was (1) conceived in legislative deliberations but passed by only one of the

two chambers in a "covered jurisdiction" and was then (2) adopted by a federal court with only minor court-ordered modifications. Appellants contend that neither the text of Section 5, nor the prior mandate of this court that these preclearance provisions be liberally construed, supply the answer to this question directly. *McDaniel* v. *Sanchez*, 452 U.S. 130 (1981); *Dougherty County Board of Education* v. *White*, 439 U.S. 32, 38 (1978).

The substantiality of the instant question arises from the direct threat posed to Section 5's future by the lower court's order. This threat exists on two levels: First, the failure to require preclearance here radically contradicts the most basic goals and policies of Section 5. Second, the lower court's decision runs so blatantly against the currents of recent case law that to let it stand would invite anarchy in the field of voting rights law.

Section 5 aims to provide realistic safeguards for minority citizens' rights and does not simply chart out a procedural detour. *Upham* v. *Seamon*, —— U.S. ——, 50 U.S. L.W. 3839 (April 20, 1982). Section 5's requirements are neither applied to, nor administered by, random groups. Rather, Congress designed Section 5 so that preclearance would check the conduct of a particular power group—state and local legislators—once factual circumstances had evidenced a presumptive pattern of voting rights infringement. Congress, moreover, designed Section 5 so that those entrusted with screening out voting rights violations, the U.S. Attorney General, would develop the expertise to discern and expose even the most subtle electoral discrimination. 42 U.S.C. § 1973 *et seq.*; *McDaniel*, *supra* 452 U.S. at 150-1.

Finally, these safeguards draw their strength not only from Section 5's historically-informed checking and grant-

ing of power and authority, but also from the unique substantive standards the Voting Rights Act employs. As recently as April, 1982 this Court has made clear the especially stringent substantive standards brought into play by Section 5. *Upham* v. *Seamon, supra; U.S.* v. *Board of Supervisors of Warren County,* 423 U.S. 642 (*Per Curiam*) (1978).

Section 5 has substantially achieved the intended purpose of safeguarding minority citizen voting rights where its provisions have been applied. *McDaniel, Supra* 452 U.S. at 151 n.32. Appellants believe the Section 5 preclearance provisions were capable of achieving their intended purpose in the instant South Carolina context, but for the lower court's erroneous application of the standards articulated by this court. Instead, a legislative plan too partisan to even garner sufficient support for full legislative enactment was let stand. Thus, while Section 5 would have permitted experts from the Justice Department to examine the reappointment plan for adverse racial infection, the lower court did not permit it to do so. The good faith examination of the court is no substitute for the more rigorous review intended by Section 5 through the U.S. Attorney General's acquired expertise in this area. 429 U.S. at 643-644.

A brief examination of applicable and controlling standards underscores the nature of the lower court's error and the importance of corrective action by this court.

McDaniel and other case law of this court defines the principles and precedent that govern preclearance application. Two basis complementary principles of Section 5 preclearance application emerge from this case law: First, all legislative reapportionment plans are subject to preclearance; Second, only court-drawn reapportionment plans are exempt from preclearance. A decision on *McDaniel,*

Supra application or non-application should satisfy both these principles. 452 U.S. 130. The lower court's order satisfies neither and leaves the case law of this court in shambles.

The legislative status of a reapportionment plan stems from its authorship by a legislative body not from its label, not from its reflection of legislative initiative or autonomy and not from its achieving fruition in the legislative process. This court has held, for instance, that a plan prepared by a legislative body acting under court direction is still a legislative plan. *Wise* v. *Lipscomb*, 437 U.S. 535 (1978).

In *McDaniel*, furthermore, this court held Section 5 fully applicable to a court-adopted plan that a legislative body originated not through its ordinary deliberative process but through an independent expert. 452 U.S. at 136. This court further held that the body's failure to adopt the plan prior to district court submission did not shield the plan from preclearance. *Id.*

Essentially, the legislative origin of the *McDaniel* plan endured. The plan's expression of the "policy choices of the elected representatives—no matter what constraints have limited (their) choices", controlled. 452 U.S. at 153.

Bewilderment must greet Section 5's non-application to a plan adopted virtually intact from a "covered jurisdiction's" submission of a reapportionment scheme prepared and approved by one, of two, state legislative chambers acting without court direction. Why should a legislatively originated plan that fails to survive the full legislative gauntlet be shielded from preclearance where the plan is submitted by the authoring legislative chamber, a "covered jurisdiction" defendant, and adopted by a district court virtually *in toto*? Can a politically stunted reapportionment plan be cast as non-legislative, despite its exclusively

legislative parentage? Where in this Court's prior decisions did the lower court ground its belief that the legislative status of a reapportionment plan was anything less than indelible?

Concluding whether or not a plan had legislative status impliedly involves a determination of whether it had the alternative, preclearance-immune, status of a court plan. This court in *McDaniel* explicitly precluded court status for those plans submitted by the "elected representatives" of a "covered jurisdiction". *Id.*[1] Furthermore, in *McDaniel* and other decisions, this court has rejected conferring court status on a reapportionment plan based merely on court adoption. *McDaniel, supra,* 452 U.S. 130; *Wise, supra,* 437 U.S. 535.

The lower court's treatment of the instant reapportionment plan as a court plan, therefore, creates additional inconsistencies with controlling law and threatens the very integrity of the Voting Rights Act.

If the lower court's order is to become law, it will substantially undercut Section 5's preclearance safeguard. It will, moreover, send a very significant and mischievous message to legislatures in "covered jurisdictions." Committees and chambers will be tempted to preserve reapportionment plans in legislative limbo assuring, thereby, their non-legislative status and saving them from subjection to full legislative debate and the rigors of Section 5.

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[1] In dictum, at least, this court went even further to suggest that only a plan actually fashioned by the court, and therefore, no plan submitted by any litigant, was a court plan for the purposes of preclearance—exemption. Appellants do not ask this court to address this broader question on the facts of the case at bar. *McDaniel, supra,* 452 U.S. at 148-149.

CONCLUSION

For these reasons, the court should note probable jurisdiction for this appeal.

Respectfully submitted,

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